
Local Government & Housing Committee

HB 2759

Brief Description: Increasing penalties for chemical, biological, and other crimes.

Sponsors: Representatives Buck, Hurst, Lisk, Talcott, Schoesler, Pflug, Woods and Pearson.

Brief Summary of Bill

- Creates specific felony terrorism crimes of malicious detonation or release (and malicious placement of malicious intimidation or harassment with, and malicious threat to use a real or imitation) chemical, biological, explosive, incendiary, flammable, or radiological substance or device.
- Includes several of the new felony terrorism crimes within aggravated first degree murder, which is subject to the death penalty or life imprisonment without release.
- Repeals provisions of malicious mischief and explosives law statutes.

Hearing Date: 2/6/02

Staff: Ilene Miller (786-7310).

Background:

Terrorist Attacks

On September 11, 2001, terrorists hijacked four commercial airliners and crashed them into the twin towers of the World Trade Center, into the Pentagon, and onto a field in Pennsylvania, killing thousands of people. Shortly after these attacks occurred, anthrax-contaminated mail was found in various locations, including postal facilities, Congressional offices, and the United States Supreme Court. As a result of exposure to anthrax contaminated mail, some people became infected with inhalation or cutaneous anthrax, and some died from inhalation anthrax.

After the September 11, 2001 attacks, the United States began a military campaign to eliminate terrorism. The federal government and numerous state legislatures also have begun

reviewing current laws and considering and enacting legislation to prevent and respond to terrorism and to punish persons committing or attempting to commit terrorist attacks.

On October 26, 2001, President Bush signed the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT). USA PATRIOT creates new terrorism crimes, increases criminal penalties, and broadens application of the death penalty to terrorist acts.

Bombing-related crimes

The Washington State Explosives Act (Explosives Act) includes provisions regarding licensing for and manufacture of explosives as well as the sale, transport and storage of explosives. The Explosives Act also includes criminal provisions making malicious placement or explosion or intimidation or harassment with an explosive felonies under Washington law.

In 1997 the Explosives Act was amended to include terrorism-related crimes. The crimes of threatening to bomb, malicious placement of an explosive, and malicious explosion of a substance were ranked under the Sentencing Reform Act (SRA), with rankings for then-existing crimes increased and higher rankings imposed for bombings done with the intent to commit a terrorist act. Bombing related crimes are classified as "A," "B," or "C" felonies.

Definitions

The definition of "terrorist act" pertains specifically to certain crimes within the Explosives Act. The definition of "terrorist act" means an act that is intended to:

- intimidate or coerce a civilian population;
- influence the policy of a branch or level of government by intimidation or coercion;
- affect the conduct of a branch or level of government by intimidation or coercion; or
- retaliate against a branch or level of government for a policy or conduct of the government.

The definition of "explosive" or "explosives" is defined for purposes of the Explosives Act and includes any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion, that contains any oxidizing and combustible units, or other ingredients, in such amounts that any type of ignition may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb.

Offenses

Some of the bombing related crimes focus on the act itself, and some of the crimes focus on hoaxes and threats.

Malicious explosion of a substance occurs generally when a person maliciously destroys or damages any building; any type of transportation listed; or any public utility transmission system or structure by the explosion of a substance or material.

Malicious placement of an explosive occurs generally when a person maliciously places an explosive in, upon, under, against, or near any building; any type of transportation listed; or in such a manner as to destroy or injure if it exploded.

Malicious placement of an imitation device occurs generally when a person maliciously places an imitation device in, upon, under, against, or near any building; any type of transportation listed; or any public utility transmission system or structure with the intent to give the appearance that the imitation device is real.

For these three crimes, the crime is a first degree offense if a person acts with the intent to commit a terrorist act and a second degree offense if committed under circumstances not amounting to a crime in the first degree. For the first two crimes, a third degree is added if the offense was committed under circumstances not amounting to a first or second degree offense.

Intimidation or harassment with an explosive occurs generally when a person exhibits a device designed, assembled, fabricated, or manufactured, to convey the appearance of an explosive, and who intends to, and does intimidate or harass another person.

Threats to bomb or injure property occurs generally when a person threatens to either bomb or otherwise injure any public or private school building, any place of worship, any governmental property, any other building or common structure or carrier used for human occupancy or communicates or threatens to communicate any such information knowing it to be false and with the intent to alarm.

Criminal Sentencing

An adult offender who commits a felony on or after July 1, 1984, is subject to the provisions of the SRA, and a court generally must impose a sentence within the standard sentence range based on the severity of the crime and the offender's felony convictions. Crimes are categorized into one of 16 "seriousness levels" depending on the seriousness of the offense. An adult offender is also assigned an "offender score" generally based on the number of the offender's prior convictions. A table that matches the "seriousness level" of the crime with the "offender score" is used to determine the offender's sentence.

Three strikes

Under what is commonly referred to as the "Three Strikes and You're Out" law, a persistent offender is subject to a sentence of life imprisonment. A person is considered a "persistent offender" if he or she commits three most serious offenses. The term "most serious offense" includes all class A felonies and several other enumerated offenses.

Death Penalty

A person is guilty of aggravated first-degree murder if the person committed premeditated first-degree murder and at least one aggravating circumstance exists. Some examples of aggravating circumstances are: the victim was a law enforcement officer, corrections officer, or firefighter who was performing his or her official duties; the person murdered more than

one victim as part of a common scheme or in a single act; or the murder was committed in the course of, in furtherance of, or in immediate flight from one of several specified crimes. The sentence for aggravated first-degree murder is either life imprisonment without the possibility of release or death.

Summary of Bill:

Bombing-related crimes

Portions of the Washington State Explosives Act and several bombing related crimes are repealed. The following crimes are repealed: *Malicious explosion of a substance; Malicious placement of an explosive; Malicious placement of an imitation device; Intimidation or harassment with an explosive; and Threats to bomb or injure property.*

Terrorism-Related Definitions

A "device" means any apparatus, appliance, contrivance, or contraption assembled, fabricated, or manufactured with any destructive, lethal, noxious, or pyrotechnic substance (including chemical, biological, explosive, incendiary, flammable, or radiological) that is designed or intended to disfigure, damage, destroy, distract, or harass.

The definition of "imitation, fake, or hoax substance or device" includes any substance or device that does not meet the "device" definition but by appearance or representation would lead a reasonable person to believe the device or substance is a device as defined.

Offenses.

New terrorism crimes are added to the criminal code. Some of the new crimes focus on the commission of terrorist acts, and some of the new crimes focus on hoaxes and threats of terrorist acts.

Malicious detonation or release of a chemical, biological, explosive, incendiary, flammable, or radiological substance or device occurs generally when a person, by the detonation or release of a chemical, biological, explosive, incendiary, flammable, or radiological substance or device, maliciously damages, disfigures, destroys or contaminates any means of transportation listed, any type of utility listed, any computer system or network, or other structure.

Malicious placement of a chemical, biological, explosive, incendiary, flammable, or radiological substance or device occurs generally when a person maliciously places a chemical, biological, explosive, incendiary, flammable, or radiological substance or device in, upon, under, against or near any of the following in such a manner that it would destroy, contaminate, damage or injure it if diffused, ignited or exploded:

- any type of building;
- any means of transportation listed;
- any type of utility listed;
- any computer system or network; or

- any other structure.

Malicious intimidation or harassment with a chemical, biological, explosive, incendiary, flammable, or radiological substance or device occurs generally when a person intentionally intimidates or harasses another person by maliciously exhibiting a chemical, biological, explosive, incendiary, flammable, or radiological substance or device.

Malicious threat to use a chemical, biological, explosive, incendiary, flammable, or radiological substance or device occurs generally when a person threatens to use a chemical, biological, explosive, incendiary, flammable, or radiological substance or device against any school building, any place of worship, any place of public assembly, any governmental property or any other building used for human occupancy; or repeats any information about the threatened use, knowing the information to be false, and does so with the intent to alarm others.

It is not a defense that the threat was a hoax.

For these four crimes, the crime is a first degree offense if committed with intent; a second degree offense if a person's actions endanger the life or safety of a human being under circumstances not amounting to a first degree offense; and a third degree offense if the crime was committed under circumstances not amounting a first or second degree offense.

Malicious placement of an imitation, fake, or hoax chemical, biological, explosive, incendiary, flammable, or radiological substance or device occurs generally when a person maliciously places an imitation, fake, or hoax chemical, biological, explosive, incendiary, flammable, or radiological substance or device in, upon, under, against or near any type of building, any means of transportation listed, any type of utility listed, any computer system, network, telecommunications, or other structure with the intent to give the appearance or impression that this device or substance is real.

Malicious intimidation or harassment with an imitation, or hoax chemical, biological, explosive, incendiary, flammable, or radiological substance or device occurs generally when a person intentionally intimidates or harasses another person by maliciously exhibiting an imitation, fake, or hoax chemical, biological, explosive, incendiary, flammable, or radiological substance or device.

For these two crimes, the crime is a first degree offense if committed in furtherance of a terrorist act, and a second degree offense if the crime was committed under circumstances not amounting to a first degree offense.

Criminal Sentencing

Terrorism crimes are added to the seriousness level ranking order in the SRA. The repealed bombing related crimes are removed from the seriousness level ranking order.

Three Strikes

Malicious placement of an imitation, hoax, or fake in the first degree and malicious

intimidation or harassment with an imitation, hoax, or fake in the second degree are added to the list of most serious offenses. A conviction for any of these crimes constitutes a "strike" under the persistent offender statute.

Death Penalty

Malicious detonation or release in the first degree, malicious placement in the first degree; malicious intimidation or harassment in the first degree, and malicious threat in the first degree are added as alternate means of committing aggravated first degree murder

Appropriation: None.

Fiscal Note: Requested on February 6, 2002.

Effective Date: Ninety days after adjournment of session in which bill is passed.